Supreme Court, U.S.
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No. 86-305

In The

Supreme Court of the United States

October Term 1986

RICHARD REYNOLDS

Petitioner

versus

INGALLS SHIPBUILDING DIVISION,
LITTON SYSTEMS, INC.

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

RICHARD A. REYNOLDS

VS. CIVIL ACTION NO.
S83-0689(N)

INGALLS SHIPBUILDING DIVISION,
LITTON SYSTEMS, INC.

RULING ON MOTION

In this motion for reconsideration, Richard A. Reynolds requests that the court review its decision of January 14, 1985, that Litton Industries was not a "vessel" as defined in 33 U.S.C. Section 902(21). Reynolds' primary contention is that Litton stated in response to plaintiff's request for admissions, and stipulated in the pretrial order, that it was the operator of and controlled activities aboard the vessel CG-47 (the USS TICONDEROGA) at the time of Reynolds'

injury. Reynolds contends that as a result under Fed.R.Civ.P. 36(b) and 16(e), the court is foreclosed from holding that Litton is not an "operator," and therefore a "vessel" for purposes of suit under 33 U.S.C. Section 905(b). The court is fully cognizant that Litton does not dispute that it had physical operational control of the USS TICONDEROGA at the time of Reynolds' injury. The memorandum opinion of January 14 makes clear, however, that the term "operator" as used in section 902(21) does not encompass every individual having operational control over a vessel. Litton's dominion over the vessel was to further the construction of the vessel and comply with its contract to construct the vessel. It is manifest that Litton did not stipulate that its operation of the TICONDEROGA was for any other

purpose. Reynolds' part in the operations of the TICONDEROGA was also in furtherance of Litton's contract to construct the vessel. Reynolds' motion for reconsideration is therefore denied.

Lafayette, Louisiana, this 11th day of March, 1985.

s/ W. Eugene Davis
United States Circuit
Judge
(Sitting by Designation)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

RICHARD A. REYNOLDS — PLAINTIFF

VERSUS — CIVIL ACTION NO. S83-0689(N)

INGALLS SHIPBUILDING DIVISION, LITTON SYSTEMS, INC. — DEFENDANT

J U D G M E N T

This cause coming on to be heard on the motion of the defendant, Ingalls Shipbuilding Division, Litton Systems, Inc., for summary judgment and the Court having considered the motion, is of the opinion that there is no controverted material issue of fact and that the defendant's motion to dismiss the plaintiff's 33 USC 905(b) claim should be granted for the reasons stated in the Court's memorandum opinion dated January 14, 1985.

Summary Judgment having been granted to the defendant as to all causes of action asserted in the complaint with the exception of plaintiff's claim under Section 905(b) of the Longshoremen and Harbor Workers' Compensation Act on October 3, 1984.

IT IS, THEREFORE, ORDERED that the complaint be dismissed with prejudice, costs to be taxed to the plaintiff.

ORDERED AND ADJUDGED, this, the 23rd day of January, 1985.

s/ W. Eugene Davis
UNITED STATES CIRCUIT JUDGE
(Sitting by Designation)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

RICHARD A. REYNOLDS

VS. CIVIL ACTION NO. S83-0689(N)

INGALLS SHIPBUILDING DIVISION, LITTON SYSTEMS, INC.

MEMORANDUM OPINION

Richard Reynolds was employed by Litton Industries as a shipfitter. On May 5, 1982, Reynolds was injured while participating in the initial sea trial of the United CG-47, a vessel Litton was building for the United States. Reynolds contends that the Litton personnel operating the CG-47 failed to warn him before making high speed turns, causing him to fall and injure himself. The terms of Litton's contract with the

United States vest title and ownership of the vessel in the United States. The contract requires Litton to conduct the "Alpha" sea trials, using its own personnel to operate the vessel. The high speed turns during which Reynolds was injured are required by the construction contract as part of the sea trials.

Reynolds' original complaint stated claims under the Jones Act, the general maritime law, Mississippi common law, and Section 905(b) of the Longshoremen's & Harbor Workers' Compensation Act, 33 U.S.C. Section 905(b). The only claim remaining is under Section 905(b).[1]

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[1] (b) In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warran-

The dispositive issue in Litton's motion for summary judgment is whether Litton is a "vessel" for Section 905(b) purposes. 33 U.S.C. Section 902(21) defines vessel to include: "[A] vessel's owner, owner pro hac vice, agent, operator, charterer or bareboat charterer . . . ." Reynolds contends that Litton was the "operator" of the CG-47 and thus a vessel for 905(b) purposes. Since the

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ties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed by the vessel to provide ship building or repair services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing ship building or repair services to the vessel. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter.

broad definition of operator urged by Reynolds does not comport with the intention of 905(b), Litton's motion for summary judgment is granted.

There appear to be no reported cases construing the term operator in section 902(21), nor is the legislative history of the 1972 amendments to the LHWCA helpful. The House report on the 1972 amendments on Public Law 92-576, simply states that: "Vessel would be defined as any vessel upon which or in connection with which any person entitled to benefits suffers injury and including the vessel owner and others responsible for the operation of the vessel." 1972 U.S. Code Cong. & Ad. News, 92nd Cong., 2d Sess., at 4719. The background of section 905(b), however, leads the court to conclude that "operator" does not encompass an entity constructing a

vessel, which is the function Litton performed with regard to the CG-47. The House report on the 1972 amendments to the LHWCA also states:

> The committee has also recognized the need for special provisions to deal with a case where a longshoreman or shipbuilder or repairman is employed directly by the vessel. In such case, notwithstanding the fact that the vessel is the employer, the Supreme Court, in Reed v. S/S YAKA, 373 U.S. 410 [83 S.Ct. 1349, 10 L.Ed2d 448] (1963) and Jackson v. Lykes Brothers Steamship Co., 386 U.S. 371 [87 S.Ct. 1419, 198 L.Ed.2d 488] (1967), held that the unseaworthiness remedy is available to the injured employee. The committee believes that the rights of an injured longshoreman or shipbuilder or repairman should not depend on whether he was employed directly by the vessel or by an independent contractor . . . the committee's intent is that the same principles should apply in determining liability of the vessel which employs its own longshoremen or shipbuilders or repairmen as apply when an independent contractor employs such persons.

1972 U.S. Code Cong. & Ad. News, supra, at 4705.

Reed v. S/S YAKA explains why the bareboat charterer or owner pro hac vice was treated as the owner of the vessel:

> Under such arrangements full possession and control of the vessel are delivered up to the charterer for a period of time. The ship is then directed by its master and manned by his crew; it makes his voyages and carries the cargo he chooses. Services performed onboard the ship are primarily for his benefit.

373 U.S. at 412, 10 L.Ed.2d at 451.

Given this background, the court does not believe that Congress intended operator to be given so broad a definition as Reynolds urges without some more explicit statement of that intention. In this case Litton was indeed operating the CG-47 in the broad sense, but it was doing so in strict accordance with the provisions of its shipbuilding contract.

To hold Litton an operator on the basis of a function performed as a shipbuilder would be fundamentally inconsistent with Section 905(b), which specifically provides "no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing shipbuilding or repair services to the vessel." The limited nature of Litton's function in this case distinguishes it from the sort of role that Reed v. Yaka, on which section 905(b) is based, described for an entity which is to be held to the same duties as an owner.

In addition, to define operator in section 902(21) broadly enough to include Litton would be inconsistent with the Fifth Circuit decision in Ducote v. International Operating Co., 678 F.2d 543 (5th Cir. 1982). In Ducote, the plain-

tiff was employed by Burnside, a company which transferred cargo from oceangoing vessels to river barges. A barge owner had Burnside take one of its barges to Burnside's terminals for cleaning, after which Burnside personnel were to load the barge with ore. A Burnside tugboat took the barge to the terminal, where Ducote was injured. 678 F.2d at 545. The district court and the Fifth Circuit rejected Ducote's argument that Burnside was the owner pro hac vice of the barge. In doing so, the Fifth Circuit stated:

> . . . in the present case the barge was brought to Burnside's terminal by a Burnside tug, and, during the cleaning and loading operations, Burnside completely controlled the movement of the barge. However, as the district court observed, all Burnside-controlled movements of the barge were simply incidental to the cleaning and loading of the vessel.

678 F.2d at 546.

If operator were defined as Reynolds urges, Burnside would doubtless have been within the coverage of Section 905(b). See also Bossard v. Port Allen Marine Service, Inc., 624 F.2d 672, 672-73 (5th Cir. 1980) and Hess v. Port Allen Marine Service, Inc., 624 F.2d 673, 674 (5th Cir. 1980).

For the foregoing reasons, defendant Litton Systems, Inc.'s motion for summary judgment is granted.

Lafayette, Louisiana, this 14th day of January, 1985.

s/ W. Eugene Davis
United States Circuit
Judge
(Sitting by Designation)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

RICHARD A. REYNOLDS — PLAINTIFF

VS. — CIVIL ACTION NO. S83-0689(N)

LITTON SYSTEMS, INC. — DEFENDANT

O R D E R

This cause having come before the Court for its consideration on defendant's Motion For Partial Summary Judgment and the Court, being fully advised in the premises, finds that said Motion should be granted as to all causes of action asserted in the complaint with the exception of plaintiff's claim under Section 905(b) of the Longshoremen and Harbor Workers' Compensation Act. Plaintiff's exclusive remedy shall be pursuant to the provisions of 33 U.S.C. Section 905(b) and subject to the defenses therein. It is therefore,

ORDERED that defendant's Motion For Partial Summary Judgment is granted as to all causes of action asserted in the complaint with the exception of plaintiff's claim under Section 905(b) of the Longshoreman and Harbor Workers' Compensation Act.

SO ORDERED this the 2nd day of October, 1984.

s/ Britt R. Singletary
UNITED STATES MAGISTRATE